

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 2

INITIAL STATEMENT OF REASONS**CALIFORNIA CODE OF REGULATIONS**

TITLE 8, Chapter 4, Subchapter 4, Article 13, Section 1602
of the Construction Safety Orders (CSO)

Personal Flotation Devices**SUMMARY**

The Occupational Safety and Health Standards Board (board) initiated this rulemaking as the result of Petition File No. 418, submitted by Mr. Michael Grupa, STEARNS, Inc. (petitioner). The petition was granted on October 19, 2000, to the extent that an advisory committee be convened by board staff to consider amendments to Title 8, Construction Safety Orders, section 1602. The petitioner recommended amending section 1602 to clarify which United States Coast Guard (USCG) approved personal flotation device (PFD) is required for employees working over or near water. Confusion exists in the construction industry as to which type of USCG approved PFD meets the requirement in section 1602(a)(1), which states that workers must use "U.S. Coast Guard approved personal flotation devices that are of a type that will support an unconscious person's head above water." CSO section 1602(a)(1), requires employees to wear United States Coast Guard (USCG) approved personal flotation devices of a type that will support an unconscious person's head above water; however, there is no type of USCG approved personal flotation device (PFD) that will, at all times and under all conditions, meet the requirement to support an unconscious person's head above water. Additionally, the standard does not identify the specific type of personal flotation device to be worn. In order to eliminate the confusion as to what type of PFD the employees must wear, board staff proposes to add language to section 1602 that clearly states that employees must wear an USCG approved PFD, marked or labeled Type I, Type II, Type III or Type V as specified, when they work at locations where the danger of drowning exists. Board staff wishes to emphasize that this proposal clarifies what types of USCG approved PFDs meet the requirements of Section 1602, and provides the employer with flexibility to select the most effective PFD for use by their employees, based on the specific worksite conditions.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION**§ 1602. Work Over or Near Water.****Subsection (a)(1)**

Section 1602 addresses drowning hazards associated with work over or near water by requiring specific equipment to be worn by the employees and safety equipment to be immediately available at the jobsite, including personal flotation devices (life jackets), ring buoys, lifesaving boats, and tag or safety lines. Included in section 1602(a)(1) is a requirement for U.S. Coast Guard approved personal flotation devices of a type that will support an unconscious person's head above water.

An amendment is proposed to delete the phrase “of a type that will support an unconscious person's head above water” and replace this language with “and marked or labeled Type I PFD, Type II PFD, Type III PFD, or shall be a USCG approved Type V PFD that is marked or labeled for use as a work vest for commercial use or for use on vessels.” This amendment clarifies the existing requirement for USCG approved personal flotation devices that must be worn, and does not impose any new requirements.

Because current language does not state clearly which type of PFD meets the requirement in subsection (a)(1), this amendment is necessary to clarify that Type I PFD, Type II PFD, Type III PFD, or Type V USCG approved PFDs will provide the necessary safety when employees work at locations where the danger of drowning exists.

This proposed amendment is also necessary to render Title 8 standards at least as effective as federal requirements in 29 CFR, Section 1926.106, which allows any type OSHA approved PFD to be worn at construction sites where employees work near or over water. Like the language of the proposed amendment, the federal language in section 1926.106 limits the use of PFDs to those marked or labeled as Type I PFD, Type II PFD, Type III PFD, or shall be a USCG approved Type V PFD.

DOCUMENTS RELIED UPON

1. Petition dated June 1, 2000, submitted by Michael Grupa, Director of Sales & Marketing, STEARNS, Inc., to the Occupational Safety and Health Standards Board.
2. Division report dated July 28, 2000, from John Howard, Chief, Division of Occupational Safety and Health to John MacLeod, Executive Officer, Occupational Safety and Health Standards Board.
3. Occupational Safety and Health Standards Board evaluation of the petition dated August 30, 2000.
4. Occupational Safety and Health Standards Board Decision dated October 19, 2000, in the matter of Petition File No. 418 by Michael Grupa, Director of Sales & Marketing, STEARNS, Inc.

These documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the standards board office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

REASONABLE ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES

No reasonable alternatives were identified by the board and no reasonable alternatives identified by the board or otherwise brought to its attention would lessen the impact on small businesses.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposed amendment clarifies an existing standard and eliminates confusion about what types of USCG approved personal flotation devices must be provided by the employer, and used by employees when working at locations where the danger of drowning exists.

Cost Impact on Private Persons or Businesses

The board is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in

complying with the proposal. Furthermore, the standard does not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standard does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed standard does not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to this standard will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No reasonable alternatives have been identified by the board or have otherwise been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.